IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1442 OF 1988

East India Transport Agency,
(Godown No.3), Gr.floor,18/24,
Nandlal Jani Road, Wadi Bunder,
Bombay - 400 009. ... Appellant.

V/s.

1. The Trustees of the Port of Bombay.
Bellard Estate, Fort,Bombay. ... Respondent.

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WITH

FIRST APPEAL NO.1443 OF 1988

N.B.Freight Movers (P) Ltd.,
Godown No.10, Gr.Floor,
18/12,Nandalal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1444 OF 1988

Patel Roadways Limited,
18/24, Nandlal Jani Road,
Godown No.4, Ground floor,
Wadi Bunder, Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1445 OF 1988

Chandan Singh & Sons,
No.13D, 1st floor,
18/24 Nandlal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1446 OF 1988

New Baria Transport Corporation
13 D, 1st floor,
18/24 Nandlal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1447 OF 1988

Associated Roadlines Corporation,
No.13/C 1st floor,
18/24 Nandlal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1448 OF 1988

Mohan Singh B. Sidhu,
No.8, Gr. floor,
18/24 Nandlal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1449 OF 1988

1. Mrs. Sudesh S. Sharma.
2. Miss. Anuradha S. Sharma
   5-C, Malabar Apartments,
   Nepeansea Road, Bombay 400 036. ... Appellants.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

FIRST APPEAL NO.1450 OF 1988

Sukhvir Motor Stores,
18/24, Nandlal Jani Road,
Shop No.11,Gr.floor,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1451 OF 1988

New India Roadways,
R.No.13/A, 1st floor,
18/24 Nandalal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1452 OF 1988

Sukhvir Motor Stores,
18/24 Nandlal Jani Road,
1st floor, No.13E,
Bombay 400 009. ... Appellant

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1453 OF 1988

Rajasthan Roadways,
No.13/B 1st floor,
18/24 Nandlal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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FIRST APPEAL NO.1454 OF 1988

Nitco Roadways (P) Ltd.,
Godown No.1, Gr.floor, 18/24
Nandlal Jani Road, Wadi Bunder,
Bombay-9. ... Appellant

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

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AND

FIRST APPEAL NO.1455 OF 1988

Gagan Freight Carriers,
Godown No.9, Gr.floor,
18/24 Nandlal Jani Road,
Bombay 400 009. ... Appellant.

V/s.

The Trustees of the Port of Bombay,
Bellard Estate, Fort, Bombay. ... Respondent.

Mr.M.M.Vashi, Advocate for Appellant in all the appeals.

Mr.U.J.Makhija i/b M/s Mulla & Mulla & CBC, advocate for Respondent No.1 in all the appeals.

Coram: Smt.Nishita Mhatre, J.

Dated: 14th October, 2004.

ORAL JUDGMENT:

1. These appeals arise out of an order passed by the City Civil Court dismissing the Chamber Summonses taken out by all the appellants. The Bombay Port Trust

(hereinafter called the Respondent) had leased out a plot of land admeasuring 3379 1/9 sq.yds. situated at Elphinstone Estate, Bombay on 27th November, 1906. The Lease was a building lease. The leasehold rights were assigned by one Charles Brown in favour of M/s. Alcock Ashdown Co. Ltd. which was approved by the respondent. The lease agreement expired by efflux of time on 27th February,1913. The respondent offered to renew the lease on certain conditions. However, this offer was declined by M/s Alcock Ashdown Co. Ltd. On 11th February, 1963, the respondent terminated the lease and called upon M/s. Alcock Ashdown Co. Ltd. to deliver the possession. Suit No.569 of 1964 was filed by the Respondent against M/s. Alcock Ashdown Co.Ltd. in the Bombay City Civil Court on 22nd February, 1964 for possession. During the pendency of this suit, the company M/s.Alcock Ashdown Co.Ltd. was ordered to be wound up pursuant to an order passed in Company Petition No. 861 of 1971. Pending the liquidation proceedings, the Government of India acquired the assets of the company under "Alcock Ashdown Co. Ltd.(Acquisition of Undertakings) Act, 1973. The official liquidator was brought on record in the suit. The City Civil Court decreed the suit on 26th November, 1975 in favour of the respondent. The respondent then tried to execute the decree by taking out execution proceedings in Chamber Summons No.794 of 1977 which were obstructed by International Rubber & General Industries Pvt.Ltd.,

Killik Nixon Ltd. and M/s Gokuldas & Sons in respect of the premises in their possession. The Trial Court made the Chamber Summons absolute on 11-9-1979. First Appeals preferred by the Obstructionist against the order of the Trial Court were dismissed by the learned Single Judge in this court. LPAs filed were also dismissed by the Division Bench. The SLP filed on 7th October, 1985 before the Apex Court by the International Rubber & General Industries Pvt.Ltd. was also dismissed. While dismissing the SLP, the Apex Court permitted the company to continue the premises till 30th April, 1988 on condition that it filed the usual undertaking regarding handing over possession on the stipulated date and payment of rent. The company was also required to undertake not to induct any other person in the suit premises. The respondents then attempted to execute the decree on 2nd May, 1988 against the present appellants who obstructed the same.

2. The Chamber summonses were filed by all the appellants before the Trial court. The prayer in the chamber summonses was as follows :

> "(a) That the execution of Order for possession dated 11.9.1979 passed by His Honour Judge Shri H. Suresh in Chamber Summons dated 2.8.1977 in the Short cause suit No.569 of 1964 in this Hon'ble Court and/or the Appellate Order of the Supreme Court of India dated 27.10.85 in the Special Leave Petition (Civil)

> No.8541 of 1985 in respect of the Gala No. on floor in the building situated at 18/24, Nandlal Jani Road at Elphinstone Estate, Wadi Bander, Bombay - 400 009, in possession of the Applicant be stayed temporarily for a period of three months;"

The Trial Court granted ad-interim stay as prayed. However, the chamber summonses came to be disposed of on 31st October, 1988 by the impugned Judgment.

3. Although the Trial court has considered various contentions raised by the parties before it such as whether the Chamber summons was maintainable under order 22 Rule 97 and Order 22 Rule 99, it is not necessary for me to go into these findings. This is because the prayer in the Chamber Summonses was limited to seeking a temporary stay of the execution proceedings for a period of 3 months. No other prayer was made in the chamber summons. No amendment has been sought to the prayer in the chamber summons nor have any other chamber summonses been taken out by the appellants. In my view, therefore, there was absolutely no need for the Trial Court to have gone into the question as to whether the Chamber Summonses were maintainable under the Order 22 Rule 97 or Order 22 Rule 99. In fact, the chamber summonses filed by the appellants have become infructuous.

4. The appeals are therefore, dismissed. However, the appellants are at liberty to take appropriate proceedings in the matter in order to establish their rights over the premises. The findings of the Trial Court will not bind the parties in any further proceedings which may be taken out by the appellants. On a request made Mr. Vashi for the appellants, the decree shall not be executed for a period of 12 weeks from today.

5. Certified copy expedited.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.1442 OF 1988
WITH
FIRST APPEAL NO.1443 OF 1988
FIRST APPEAL NO.1444 OF 1988
FIRST APPEAL NO.1445 OF 1988
FIRST APPEAL NO.1446 OF 1988
FIRST APPEAL NO.1447 OF 1988
FIRST APPEAL NO.1448 OF 1988
FIRST APPEAL NO.1449 OF 1988
FIRST APPEAL NO.1450 OF 1988
FIRST APPEAL NO.1451 OF 1988
FIRST APPEAL NO.1452 OF 1988
FIRST APPEAL NO.1453 OF 1988
FIRST APPEAL NO.1454 OF 1988
AND
FIRST APPEAL NO.1455 OF 1988

Date of Decision : October 14, 2004

For Approval and Signature

The Hon'ble Smt. Justice NISHITA MHATRE

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent

to Nagpur, Aurangabad & Goa offices?